

# CALIFORNIA INSTITUTE OF TECHNOLOGY JET PROPULSION LABORATORY

## GENERAL PROVISIONS: ARCHITECT-ENGINEER CONTRACT

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### **GENERAL PROVISIONS CANNOT BE ALTERED WITHOUT NASA APPROVAL**

The following attachments are incorporated into the General Provisions. Submission of an offer and beginning performance constitute certification and recertification per Form JPL 2892.

- Release of Information, Form JPL 1737
- Notification to Prospective Contractors of JPL's Ethics Policies and Anti-Kickback Hotline, Form JPL 2385
- Certifications, Form JPL 2892

- Asbestos Notification, Form JPL 2895
- Notice of Potential Tax Withholding R 7/03

**AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS** [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, FPC, CREI, A-E – 8/01] [FAR 52.222-36 - 4/84]

(This Article applies to contracts over \$2,500, unless the work is performed outside the United States by employees recruited outside the United States.)

Incorporate by reference FAR 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793).

**AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS** [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, FPC, CREI, A-E – 4/99] [FAR 52.222-35 - 4/98]

(This Article applies to contracts over \$10,000, unless the work is performed outside the United States by employees recruited outside the United States.)

Incorporate by reference 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4212).

**ANTI-KICKBACK PROCEDURES** [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 4/99] [FAR 52.203-7 – 7/95]

(a) Definitions.

- (1) "Kickback," as used in this Article, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.
- (2) "Person," as used in this Article, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.
- (3) "Prime contract," as used in this Article, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.
- (4) "Prime Contractor," as used in this Article, means a person who has entered into a prime contract with the United States.
- (5) "Prime Contractor employee," as used in this Article, means any officer, partner, employee, or agent of a prime contractor.
- (6) "Subcontract," as used in this Article, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.
- (7) "Subcontractor," as used in this Article, (i) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (ii) includes any person who offers to furnish or furnishes general supplies to the prime contractor or a higher-tier subcontractor.
- (8) "Subcontractor employee," as used in this Article, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from:

- (1) Providing or attempting to provide or offering to provide any kickback;
- (2) Soliciting, accepting, or attempting to accept any kickback; or
- (3) Including, directly or indirectly, the amount of any kickback in the Contract price charged by a prime Contractor to the United States or in the Contract price charged by a subcontractor to a prime contractor or higher-tier subcontractor.

(c) (1) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this Article may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

- (2) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this Article.

- (3) The Institute may (i) offset the amount of the kickback against any monies owed under the Contract and/or (ii) direct that the Contractor withhold, from sums owed a subcontractor under the Contract, the amount of any kickback. JPL may order that monies withheld under subdivision (c)(3)(ii) of this Article be paid over to JPL unless JPL has already offset those monies under subdivision (c)(3)(i) of this Article. In either case, the Contractor shall notify JPL when the monies are withheld.
- (4) The Contractor agrees to incorporate the substance of this Article, including this subparagraph (c)(4), in all subcontracts under this Contract.

#### **ARCHITECTURAL DESIGNS AND DATA - INSTITUTE AND GOVERNMENT RIGHTS** [A-E – 4/99]

The Government and the Institute may duplicate, use and disclose in any manner and for any purpose, and have others so do, all data, such as, for example, drawings, designs, specifications, architectural designs of buildings and structures, notes and other architect-engineer work produced in the performance of this Contract, or in contemplation thereof, and all as-built drawings produced after completion of the work, and without additional cost to the Institute or the Government; and with respect thereto the Contractor agrees to and does hereby grant to the Institute and the Government a non-exclusive, irrevocable, royalty-free license throughout the world for governmental purposes to use, publish, translate, reproduce, deliver, perform, dispose of, and authorize others so to do, all such data which the Contractor may cover by copyright and all architectural designs as to which it may assert any rights or establish any claim under the design patent or copyright laws. The Contractor shall use due care not to deliver or include in data produced or used in the performance of this Contract any copyrighted data not licensed hereunder without the prior written approval of the Institute and the Contracting Officer, unless it provides the written permission of the copyright owner for the uses specified herein. The Contractor for a period of three years after completion of the project agrees to provide access to all such data on the request of the Institute or the Government.

#### **ASBESTOS NOTIFICATION** [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 2/00]

(This Article applies if any of the Contract effort will be performed in JPL-Pasadena buildings. Work performed outside the United States is exempt from the requirements of this Article.)

Contractor acknowledges receipt of the attached "Asbestos Notification," form JPL 2895, identifying JPL buildings containing asbestos and agrees to distribute the Notice to all its personnel prior to their commencing work in such buildings. Contractor agrees to coordinate with the JPL Safety Operations Section for special asbestos handling instructions to be given to all Contractor's personnel, including subcontractors' personnel, prior to their commencing work, if any, which could disturb asbestos in JPL-controlled buildings. The substance of this Article will be included in all subcontracts issued under this Article for work performed in JPL-Pasadena buildings.

#### **ASSIGNMENT OF RIGHTS AND DELEGATION OF DUTIES** [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 4/99] [FAR 52.232-23(a) – 1/86]

- (a) The Contractor may assign its rights to be paid amounts due or to become due as a result of the performance of this Contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.
- (b) Any such assignment or reassignment shall be subject to the following conditions:
  - (1) Any assignment or reassignment authorized under this provision shall cover all amounts payable under this Contract, and not paid as of (i) the effective date of assignment or (ii) the date JPL receives written notice of the assignment, whichever is later.
  - (2) No assignment may be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this Contract.
  - (3) Two copies of the notice of assignment, signed by the Contractor, shall be furnished to JPL, Attn: Accounts Payable.
  - (4) If a party other than the Contractor provides JPL with a notification that the amount due or to become due under this Contract has been assigned and that payment is to be made to the claimed assignee, JPL may withhold any payments which are due and payable under the Contract until JPL is furnished with either (i) verification or denial of assignment from the Contractor or (ii) reasonable proof that the assignment has been made.

- (5) The Contractor shall not furnish or disclose to any assignee under this Contract any classified document (which term includes this Contract if access to classified material is authorized under this Contract) or information pertaining to classified work under this Contract unless JPL authorizes such action in writing.
- (6) No assignment may be made which includes, either specifically or by implication, any delegation of the Contractor's duty to perform the services or provide the supplies required by this Contract unless such assignment and delegation is consented to by JPL in accordance with the provisions of paragraph (c) below.
- (c) The Contractor is prohibited, without prior written JPL consent, from delegating any part of the duties required of it by this Contract; provided, however, that nothing contained herein shall be deemed to prohibit the Contractor from placing purchase orders and subcontracts, subject, however, to the provision of this Contract entitled "Subcontracts." Delegation of duties without such consent is void.

**AUDIT AND EXAMINATION OF RECORDS – NEGOTIATION** [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 4/99]  
[FAR 52.215-2 – 8/96]

(This provision is not applicable for procurements of \$100,000 or less, for commercial items, or for utility services at rates not exceeding those established to apply uniformly to the general public, plus any applicable reasonable connection charge.)

- (a) As used in this Article, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- (b) Examination of Costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable Contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this Contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the Contract.
- (c) Cost or Pricing Data. If the Contractor has been required to submit cost or pricing data in connection with pricing action relating to this Contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to:
  - (1) The proposal for the Contract, subcontract, or modification;
  - (2) The discussions conducted on the proposal(s), including those related to negotiating;
  - (3) Pricing of the Contract, subcontract, or modification; or
  - (4) Performance of the Contract, subcontract, or modification.
- (d) Comptroller General.
  - (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this Contract or a subcontract hereunder.
  - (2) This paragraph (d) may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
- (e) Reports. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (i) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (ii) the data reported.
- (f) Availability. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this Article, for examination, audit, or reproduction, until three years after final payment under this Contract, or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of FAR, and any corresponding implementing or supplementing

provisions in the NFS, or for any longer period required by statute or by other Articles of this Contract. In addition:

- (1) If this Contract is completely or partially terminated, the records relating to the work terminated shall be made available for three years after any resulting final termination settlement; and
  - (2) Records relating to appeals under the Disputes clause of the Government Prime Contract, or if this Contract contains a "Disputes" Article, to appeals under such Article, or to litigation or the settlement of claims arising under or relating to this Contract, shall be made available until such appeals, litigation, or claims are finally resolved.
- (g) (1) The Contractor shall insert all of the provisions of this Article, including this paragraph (g), in all subcontracts under this Contract that exceed \$100,000, and:
- (A) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
  - (B) For which cost or pricing data are required; or
  - (C) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.
- (2) The Article may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government Prime Contract.
- (h) If this is a cost-reimbursement contract with an educational or other nonprofit institution, the provisions of OMB Circular No. A-133, "Audits of Institutions of Higher Learning and Other Nonprofit Institutions," apply to this Contract.

**AUTHORITY OF JPL REPRESENTATIVES** [CT, FP-R&D, T&MC, LH-T&M, CREI, A-E – 4/99]

- (a) No request, notice, authorization, direction or order received by the Contractor and issued either pursuant to a provision of this Contract, to a provision of any document incorporated in this Contract by reference, or otherwise, shall be binding upon either the Contractor or the Institute unless issued or ratified in writing by the JPL Negotiator, the Manager, Acquisition Division, JPL, or by representative(s) designated in writing by either of them. Designations of authorized representatives shall define the scope and limitations of the authorized representatives' authorities.
- (b) The Contractor shall immediately notify, in writing, the JPL Negotiator, or the Manager, Acquisition Division, JPL, whenever a request, notice, authorization, direction, or order has been received from a representative of JPL other than the JPL Negotiator, or the Manager, Acquisition Division, JPL, which, but for the lack of authorization on the part of the issuing JPL representative, would: (i) effect a change within the meaning of the "Changes" Article; (ii) increase or decrease the Contract amount or amount allotted to this Contract; or (iii) otherwise be the basis for assertion of a claim by the Contractor under any provision of the Contract.

**AUTHORIZATION AND CONSENT** [CT, FP-R&D, T&MC, LH-T&M, CREI, A-E – 4/99] [FAR 52.227-1 – 7/95, ALT I]

- (a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of the Prime Contract or any subcontract at any tier.
- (b) The Contractor agrees to include, and require inclusion of, this Article, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed \$100,000); however, omission of this Article from any subcontract, under or over \$100,000, does not affect this authorization and consent.

**BANKRUPTCY** [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 4/99] [FAR 52.242-13, 7/95]

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the Contract, written notification of the bankruptcy to the JPL negotiator responsible for administering the Contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of JPL contract numbers for all JPL contracts against which final payment has not been made. This obligation remains in effect until final payment under this Contract.

**CHANGES** [A-E – 4/99] [FAR 52.243-1, Alt. III – 4/84; FAR 52.243-6 – 4/84]

- (a) JPL may at any time, by written Unilateral Modification, and without notice to the sureties, if any, make changes within the general scope of this Contract in the services to be performed.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performing this Contract, whether or not changed by the Modification, JPL shall make an equitable adjustment in (i) the Contract price, the time of performance, or both; and (ii) other affected terms of the Contract, and shall modify the Contract accordingly.
- (c) The Contractor must assert its right to an adjustment under this Article within 30 days from the date of receipt of the Modification. However, if JPL decides that the facts justify it, JPL may receive and act upon a proposal submitted before final payment of the Contract.
- (d) JPL may require change order accounting whenever the estimated cost of a change or series of related changes exceeds \$100,000. The Contractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change. The Contractor shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by JPL.
- (e) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, JPL shall have the right to prescribe the manner of the disposition of the property.
- (f) Nothing in this Article shall excuse the Contractor from proceeding with the Contract as modified.
- (g) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of JPL.

**CLEAN AIR AND WATER** [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 8/01] [FAR 23.104 – 4/84; 52.223-2 -4/84]

(This Article does not apply to the use of facilities outside the United States. The Article applies to the Contract if it exceeds \$100,000 [or \$100,000 in one year for an indefinite delivery contract], or the facility to be used has been the subject of a conviction under the Air Act or Water Act and is listed by the EPA as a violating facility, and the acquisition is not otherwise exempt under FAR 23.104.)

Incorporate by reference FAR 52.223-2, Clean Air and Water (April 1984).

**COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT** [FP-NR&D, FP-R&D, LH-T&M, T&MC, FPC, A-E - 4/00]

(Work performed outside the United States is exempt from the requirements of this Article.)

- (a) Contractor agrees to comply with the Americans with Disabilities Act (42 U.S.C. 12101, et. seq.) and all implementing regulations.
- (b) Contractor agrees that it will be responsible to the Government and the Institute for, and will indemnify and hold harmless the Government and the Institute, its trustees, officers, and employees from any loss, cost, damage, expense or liability or suit therefor, by reason of actual or alleged property damage or personal injury of whatever kind or character, arising out of, or in connection with performance of the requirements of paragraph (a) above by the Contractor or any of its subcontractors, however the same may be caused, excepting only such loss, cost, damage, expense or liability attributable to the sole or contributory active negligence of the Government or of the Institute, its trustees, officers, or employees.
- (c) Contractor agrees to insert this Article, including (c), in all subcontracts and purchase orders hereunder.

**CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION** [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 8/01] [FAR 22.305 - 7/95; 52.222-4 - 7/95]

(Work performed outside the United States is exempt from the requirements of this Article.)

- (a) This provision is not applicable to contracts for supplies, materials, or articles ordinarily available in the open market, contracts for transportation by land, air, or water, or for the transmission of intelligence, contracts of \$100,000 or less, contracts to be performed solely within a foreign country or within a territory under United States jurisdiction other than a state, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, and Johnson Island, and contracts (or portions of contracts) for supplies in connection with which any required services are merely incidental to the contract and do not require substantial employment of laborers or mechanics, exempt under regulations of the Secretary of Labor (29 CFR 5.15), contracts requiring work to be done solely in accordance with the Walsh-Healey Public Contract Acts, and contracts for commercial items.
- (b) FAR clause 52.222-4 (July 1995) is hereby incorporated by reference in toto, except that:



- (1) The words "JPL negotiator or JPL's Contracting Officer" shall be substituted for the words "Contracting Officer" wherever they appear;
- (2) The word "Contractor" shall be substituted for the words "Prime Contractor" wherever they appear; and
- (3) The words "with JPL" shall be substituted for the words "Federal Contract with the same Prime Contractor" wherever they appear.

**CONTRACTOR AND SUBCONTRACTOR COST OR PRICING DATA, OR INFORMATION OTHER THAN COST OR PRICING DATA AND PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA** [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, A-E – 8/01] [FAR 15.403-4 - 10/00; 52.215-11 - 10/97; 52.215-12 - 10/97; 52.215-13 - 10/97; 52.215-20 - 10/97; 52.215-21 - 10/97]

(This Article is applicable if either the basic Contract or any modification exceeds \$550,000.)

(a) Contractor Cost or Pricing Data.

- (1) Whenever the negotiated price of the basic Contract, or the negotiated price of any change, or other modification to this Contract is expected to exceed \$550,000, the Contractor agrees to furnish the Institute certified cost or pricing data, unless a waiver applies or a determination is made that an exception applies (the price is based on adequate price competition, prices set by law or regulation, or the contract is for a commercial item). Whenever certified cost or pricing data are required, the Contractor agrees to furnish the data in the format requested by JPL or if JPL does not so specify, per Table 15-2 of FAR 15.408 and agrees to submit the JPL certificate form JPL 2496 or equivalent as soon as practicable after agreement on price but before award.

(2) Exceptions to Cost or Pricing Data.

- (A) (i) Basic Contracts. In lieu of submitting cost or pricing data for the basic Contract, offerors may submit a written request for exception by submitting the information described under paragraph (B), below.
- (ii) Contract Modifications. In lieu of submitting cost or pricing data for modifications under this Contract, for price adjustments expected to exceed \$550,000 on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described under paragraph (B), below.
- (iii) JPL may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(B) The relevant part of the following information is to be submitted when requesting an exception:

- (i) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.
- (ii) For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include:
  - a. For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.
  - b. For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.
  - c. For items included on an active Federal Supply Service Multiple Award Schedule or any other Federal Government contract, proof that an exception has been granted for the schedule item.
- (iii) Information on modifications of contracts or subcontracts for commercial items. If (i) the original Contract or subcontract was granted an exception from cost or pricing data requirements



because the price agreed upon was based on adequate price competition, or prices set by law or regulation, or was a contract or subcontract for a commercial item; and (ii) the modification (to the Contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the Contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

- (C) The Offeror/Contractor grants JPL or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Offeror's/Contractor's determination of the prices to be offered in the catalog or marketplace.

(b) Subcontractor Cost or Pricing Data.

- (1) Before awarding any subcontract expected to exceed \$550,000 when entered into, or before pricing any subcontract modification involving a pricing adjustment expected to exceed \$550,000, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the subcontract or modification is eligible for an exception listed in paragraph (a), above.
- (2) The requirement for obtaining certified cost or pricing data with respect to any subcontract change or other modification does not apply to any subcontract change or modification, at any tier, where this Contract is a firm fixed-price or firm fixed-price with escalation contract unless such change or other modification results from a Contract change or other modification to this Contract, nor does it apply to a subcontract change or other modification, at any tier, where this Contract is not firm fixed-price or firm fixed-price with escalation, unless the price for such change or modification becomes reimbursable under this Contract.
- (3) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR Part 15, and any corresponding implementing or supplementing provisions in the NFS, that, to the best of its knowledge and belief, the data submitted under subparagraph (b)(1) above were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.
- (4) In each subcontract that exceeds \$550,000 when entered into, the Contractor shall insert either:
  - (A) The substance of this Article, including this paragraph (4), if paragraph (b)(1) above requires submission of cost or pricing data for the subcontract; or
  - (B) The substance of the clause at FAR 52.215-13, "Subcontractor Cost or Pricing Data - Modifications," including any corresponding implementing or supplementing provisions in the NFS.

(c) Price Reduction for Defective Cost or Pricing Data.

- (1) If any price, including profit or fee, negotiated in connection with this Contract, or any cost reimbursable under this Contract, was increased by any significant amount because (i) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (ii) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (iii) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the Contract shall be modified to reflect the reduction.
- (2) Any reduction in the Contract price under paragraph (1) above due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (i) the actual subcontract or (ii) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.
- (3) (A) If the Contracting Officer determines under paragraph (1) of this Article that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:
  - (i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the Contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

- (ii) The Institute should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of JPL.
  - (iii) The Contract was based on an agreement about the total cost of the Contract and there was no agreement about the cost of each item procured under the Contract.
  - (iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- (B) (i) Except as prohibited by subdivision (c)(3)(B)(ii) of this Article, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a Contract price reduction if:
- a. The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and
  - b. The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data and that the data were not submitted before such date.
- (ii) An offset shall not be allowed if:
- a. The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or
  - b. The Government proves that the facts demonstrate that the Contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.
- (4) In the event of a disagreement between the Contracting Officer and the Contractor with respect to a question of fact involved in the Contracting Officer's determination to reduce the price of this Contract, the Contractor may, subject to the prior approval of the Institute, which approval will not be unreasonably withheld, process such disagreement as a dispute to the extent that it may be entitled to do so under the provisions of the Prime Contract.
- (d) If any reduction in the Contract price under this Article reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall indemnify the Institute for costs incurred by the Institute involved in repayments to the Government resulting from the Contractor's defective pricing including:
- (1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Institute at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
  - (2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

**CONTRACTUALLY REQUIRED NOTICES** [A-E – 4/99]

Unless otherwise specified in this Contract, any notice which the Contractor is required to provide to JPL under any provision of this Contract shall be directed to the Manager, Acquisition Division, JPL, or the Acquisition Division Manager's authorized representative.

**DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS** [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 4/99]  
[FAR 52.211-15 – 9/90]

Incorporate by reference FAR 52.211-15, Defense Priority and Allocation Requirements.

**DEFINITIONS** [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, A-E – 4/99] [FAR 52.202-1 – 10/95]

As used throughout this Contract, the following terms shall have the meanings set forth below:

- (a) The term "Administrator" means the Administrator or Deputy Administrator of the National Aeronautics and Space Administration.
- (b) The term "commercial component" means any component that is a commercial item.
- (c) The term "commercial item" means (see related term "nondevelopmental item," below):

- (1) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that:
    - (A) Has been sold, leased, or licensed to the general public; or
    - (B) Has been offered for sale, lease, or license to the general public;
  - (2) Any item that evolved from an item described in paragraph (c)(1) of this Article through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a solicitation;
  - (3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (2) of this Article, but for:
    - (A) Modifications of a type customarily available in the commercial marketplace; or
    - (B) Minor modifications of a type not customarily available in the commercial marketplace made to meet JPL or Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;
  - (4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this Article that are of a type customarily combined and sold in combination to the general public;
  - (5) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (c)(1), (2), (3), or (4) of this Article, and if the source of such services:
    - (A) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and
    - (B) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;
  - (6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;
  - (7) Any item, combination of items, or service referred to in subparagraphs (c)(1) through (6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or
  - (8) A nondevelopmental item, if the procuring activity determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments (see definition below).
- (d) The term "component" means any item supplied as part of an end item or of another component.
  - (e) The term "contract amount" means the Contract price, the estimated cost and fee, if any, or the ceiling price of the Contract.
  - (f) The term "Contracting Officer" means the Government Contracting Officer for the Prime Contract. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
  - (g) The term "Contractor" means the selling party to this Contract/Order with the California Institute of Technology (the Institute)/JPL being the buying party. The "Contractor" is the first tier subcontractor under the NASA Prime Contract between NASA and the Institute/JPL.
  - (h) (1) The term "FAR" means the Federal Acquisition Regulation as in effect on the date of this Contract, unless otherwise indicated.
  - (2) Any reference to the Contract Disputes Act is meant to refer to the Disputes provision in this Contract if any.

- (i) The term "Government" means the Government of the United States of America, unless the context is otherwise.
- (j) The term "Government-furnished property (GFP)" includes JPL-furnished, Government-owned property.
- (k) The term "Institute" means the California Institute of Technology as a party to this Contract.
- (l) The term "JPL" means the Jet Propulsion Laboratory as the organizational element of the Institute having responsibility for administration of this Contract. The rights of JPL under this Contract are the rights of the California Institute of Technology as a party to this Contract.
- (m) The term "JPL negotiator" means the individual authorized to issue and administer this Contract for JPL.
- (n) The term "NASA" means the National Aeronautics and Space Administration.
- (o) The term "NFS" means the NASA FAR Supplement as in effect on the date of this Contract, unless otherwise indicated.
- (p) The term "nondevelopmental item" means:
  - (1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;
  - (2) Any item described in paragraph (p)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring activity; or
  - (3) Any item of supply being produced that does not meet the requirements of paragraph (p)(1) or (2) solely because the item is not yet in use.
- (q) The term "person" means any individual, partnership, corporation, association, institution or other entity.
- (r) The term "Prime Contract" means the Contract between the Institute and NASA for the United States of America (herein called the Government),.
- (s) The term "Schedule" means the statements in the order/contract, including statement of work, description of items to be supplied, delivery dates, special provisions, options and any other statements excluding the General Provisions (the term "General Provisions" includes any "Additional General Provisions"), and any proposals, specifications or other documents or provisions which are made a part of this Contract by reference or otherwise.
- (t) The term "subcontract," as used in this Contract, includes, but is not limited to, purchase orders under this Contract.
- (u) The terms "United States" or "U.S." mean the United States of America.

**DRUG-FREE WORKPLACE REQUIREMENTS** [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, FPC, CREI, A-E – 4/99] [FAR 52.223-6 – 1/97]

The Contractor agrees to inform all Contractor personnel, prior to their first entrance upon JPL premises, that JPL's policy is to fully comply with the requirements of the Drug-Free Workplace Act and that Contractor personnel are required to comply with JPL's policy of maintaining a drug-free workplace.

**EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA** [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 4/99] [FAR 52.222-37 – 1/88]

(This Article is applicable if this Contract (and any subcontract) is for \$10,000 or more, unless exempted by rules, regulations, or orders of the Secretary of Labor.)

Incorporate by reference FAR 52.222-37, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.

**ENVIRONMENTAL COMPLIANCE** [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 4/99] [FAR 52.223-11 – 6/96; 52.223-12 - 5/95]

(This Article is applicable to all contracts to be performed at least partially within the United States, its possessions, and Puerto Rico.)

- (a) Environmental Compliance. Environmental controls shall be in accordance with all applicable Federal, State and local regulatory requirements and in accordance with all applicable Executive Orders of the President. In addition the contractor shall comply with the provisions set forth below.
- (b) The Contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.
- (c) (1) Definition. "Ozone-depleting substance", as used in this clause, means any substance designated as Class I by the Environmental Protection Agency (EPA) (40 CFR Part 82), including but not limited to chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or any substance designated as Class II by EPA (40 CFR Part 82), including but not limited to hydrochlorofluorocarbons.
- (2) The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR Part 82, Subpart E, as follows:

**WARNING**

Contains (or manufactured with, if applicable) (\*)\_\_\_\_\_, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

(\* *The Contractor shall insert the name of the substance(s)*)

**EQUAL OPPORTUNITY** [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, FPC, CREI, A-E – 8/01] [FAR 52.222-26 – 4/84]

(The following Article is applicable unless this Contract is exempt under the rules, regulations, and relevant orders of the Secretary of Labor issued under Executive Order 11246, as amended; for example, work performed outside the United States by employees recruited outside the United States is exempt from the requirements of this Article. If, during any 12-month period [including the 12 months preceding the award of this Contract], the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with FAR 52.222-26 during performance of this Contract. Upon request, the Contractor shall provide information necessary to determine the applicability of this Article.)

Incorporate by reference FAR 52.222-26, Equal Opportunity (E.O. 11246).

**FACSIMILE COPIES ACCEPTABLE** [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, FPC, CREI, A-E – 4/99]

The parties agree that facsimile (fax) copies of contract documents are just as binding as originally executed documents.

**FEDERAL, STATE, AND LOCAL TAXES** [FP-NR&D, FP-R&D, FPC, A-E – 4/99] [FAR 52.229-3 - 1/91]

- (a) Items of tangible personal property to be delivered under this Contract are for resale to the United States Government (California Resale Certificate No. SR AP 17-006226).
- (b) FAR 52.229-3 is hereby incorporated by reference, except that the letters "JPL" shall be substituted for the words "the Contracting Officer" and the words "the Government" wherever they appear.

**GOVERNMENT PROPERTY** [FP-NR&D, FP-R&D, LH-T&M, T&MC, FPC, A-E – 4/99] [FAR 52.245-4 – 4/84]

- (a) JPL shall deliver to the Contractor, at the time stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the delivery or performance schedule, the Government-owned property described as JPL-furnished property in the Schedule or specifications. If that property, suitable for its intended use, is not delivered to the Contractor, JPL shall equitably adjust affected provisions of this Contract in accordance with the Changes Article when:
  - (1) The Contractor submits a timely written request for an equitable adjustment; and
  - (2) The facts warrant an equitable adjustment.
- (b) Title to JPL-furnished property shall remain in the Government. The Contractor shall use the JPL-furnished property only in connection with this Contract. The Contractor shall maintain adequate property control records in accordance with sound industrial practice and will make such records available for JPL or Government inspection at all reasonable times.
- (c) Upon delivery of JPL-furnished property to the Contractor, the Contractor assumes the risk and responsibility for its loss or damage, except:
  - (1) For reasonable wear and tear;

- (2) To the extent property is consumed in performing this Contract; or
- (3) As otherwise provided for by the provisions of this Contract.
- (d) Upon completing this Contract, the Contractor shall follow the instructions of JPL regarding the disposition of all JPL-furnished property not consumed in performing this Contract or previously delivered to JPL. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by JPL. The net proceeds of any such disposal shall be credited to the Contract price or shall be paid as directed by JPL.
- (e) If this Contract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "JPL-furnished" (wherever they appear in this Article) shall be construed as "United States Government" and "United States Government-owned/JPL-furnished," respectively.
- (f) If JPL-furnished property has been provided to the Contractor under this Contract, the Contractor shall submit NASA Form 1018, "The Report of Government-Owned/Contractor-Held Property" (or equivalent) (or a negative report, if applicable), to JPL annually (date to be determined by JPL).

**INJURY AND ILLNESS PREVENTION PROGRAM** [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 4/99]

All Contractors whose personnel work at a site in California must establish and implement an effective injury and illness prevention program in compliance with California law.

**INSURANCE AND INDEMNIFICATION – A-E** [A-E – 4/99] [FAR 52.228-5 - 9/89]

- (a) Insurance. The Contractor shall, at its own expense, provide and maintain during the entire performance period of this Contract at least the following kinds and minimum amounts of insurance with the Institute named as an additional insured in policies for comprehensive liability insurance with a carrier licensed and admitted in the State of California.
  - (1) Workers' Compensation and Employer's Liability Insurance, as required by applicable Federal and state workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the Employer's Liability section of the insurance policy, except when Contract operations are so commingled with the Contractor's commercial operations that it would not be practical. The Employer's Liability coverage shall be at least \$100,000, except in states with exclusive or monopolistic funds that do not permit worker's compensation to be written by private carriers. However, the Contractor in fulfillment of its obligation to provide Workers' Compensation Insurance may maintain a self-insurance program if the Contractor is qualified pursuant to statutory authority to do so.
  - (2) Comprehensive Liability Insurance, including automobiles (owned, non-owned, or leased), completed operations, products, and contractual liability, for a combined single limit of not less than \$1,000,000 for all deaths, injuries, and property damage arising from one accident or occurrence.
  - (3) Professional Liability. The Contractor agrees that it will be responsible to the Government and the Institute for, and indemnify and hold harmless the Government and the Institute, its trustees, officers and employees from, any loss, cost, damage, expense or liability or any suit or claim therefor, by reason of breach of professional duty, arising out of or in connection with the performance of this Contract, occasioned in whole or in part by the error, omission or negligent act of the Contractor, its employees or agents. The Contractor will at all times carry such professional liability insurance as will protect it from the foregoing risks with an insurance carrier and in a form satisfactory to the Institute and in an amount of not less than \$1,000,000, unless a lesser amount is specified in the Schedule of this Contract.
- (b) Insurance Certificates and Endorsements. Before commencing work under this Contract, the Contractor shall furnish (i) certificates of insurance for the coverages specified in (a) above, and (ii) an additional insured endorsement naming the Institute as an additional insured to the Contract for the coverage specified in (a)(2) above. Such certificates and the endorsement shall provide that any cancellation or material change in the insurance policies shall not be effective (i) for such period as the laws of the State in which this Contract is to be performed prescribe, or (ii) until 30 days after the insurer or the Contractor gives written notice to JPL, whichever period is longer. Also, such certificates and the endorsement shall (i) cover contractual liability assumed under this Contract, and (ii) be primary and non-contributing to any insurance procured by the Institute. The Contractor agrees to permit the Institute to examine its original policies, should the Institute so request. Should the Contractor at any time neglect or refuse to provide the insurance required herein, or should such insurance be canceled, the Institute shall have the right to procure same and the costs thereof shall be deducted from monies then due or thereafter to become due to the Contractor.

- (c) **Indemnification.** The Contractor agrees that it will be responsible to the Government and the Institute for, and will indemnify and hold harmless the Government and the Institute, its trustees, officers, and employees, from any loss, cost, damage, expense or liability, attorney's fees, or any suit therefor, by reason of actual or alleged property damage or personal injury of whatsoever kind or character, arising out of or in connection with the performance of work hereunder by the Contractor or any of its subcontractors, howsoever the same may be caused, including any of the same resulting from alleged or actual negligent act or omission, regardless of whether such act or omission is active or passive, but excepting only such loss, cost, damage, expense or liability attributable to the sole negligence or willful misconduct of the Government or of the Institute, its trustees, officers or employees.

**LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS** [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99] [FAR 52.203-12 – 6/97]

(This Article applies if this Contract is expected to exceed \$100,000.)

Incorporate by reference FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions (June 1997).

**METHOD OF PAYMENT** [A-E – 4/99]

- (a) Estimates shall be made monthly of the amount and value of the work and services performed by the Contractor under this Contract which meet the standards of quality established under this Contract. The estimates shall be prepared by the Contractor and accompanied by any supporting data required by JPL.
- (b) Upon approval of the estimate by JPL, payment upon properly executed vouchers shall be made to the Contractor, as soon as practicable, of 90% of the amount, less all previous payments. Also, whenever JPL determines that the amount retained is in excess of the amount adequate for the protection of the Institute, JPL may release the excess amount to the Contractor.
- (c) Upon satisfactory completion by the Contractor and acceptance by JPL of the work done by the Contractor under this Contract, the Contractor will be paid the unpaid balance of any money due for work under the statement, including retained percentages relating to this portion of the work.
- (d) JPL may elect to either send payments to the Contractor by mail or require the Contractor to accept electronic payments. Payment shall be deemed to have been made on the date the check is mailed or the date of payment by electronic funds transfer.
- (e) Before final payment under the Contract, or before settlement upon termination of the Contract, and as a condition precedent thereto, the Contractor shall execute and deliver to JPL a release of claims against the Institute arising under or by virtue of this Contract, other than any claims that are specifically excepted by the Contractor from the operation of the release in amounts stated in the release.
- (f) If the Contractor fails to return the release described in (d) above with the release either executed for the amount determined by JPL or with a different amount within 60 days of JPL's request, JPL may make final payment in the amount determined by JPL and the release (for the JPL-determined amount) described in (d) above will be deemed to have been executed and delivered by the Contractor.

**NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT** [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99] [FAR 52.227-2 – 8/96]

(The provisions of this Article shall be applicable only if the amount of this Contract is expected to exceed \$100,000, except when complete performance and delivery are outside the United States, its possessions, and Puerto Rico, unless ultimate delivery is into those areas.)

- (a) The Contractor shall report to the Contracting Officer and JPL, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Contract of which the Contractor has knowledge.
- (b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this Contract or out of the use of any supplies furnished or work or services performed under this Contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.



- (c) The Contractor agrees to include, and require inclusion of, this Article in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed \$100,000.

**NOTICE TO JPL OF LABOR DISPUTES** [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99] [FAR 52.222-1 – 2/97]

- (a) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice to JPL. The initial notice shall include the following:
  - (1) Identification of parts/materials, etc., which are or may be affected;
  - (2) Brief description of work-around plans to avoid delivery or performance delays. If the actual or potential dispute involves a lower-tier subcontractor, advise as to potential alternate sources;
  - (3) Other Government agencies having responsibility for any functions concerning the affected operation, e.g., quality control, agency resident representative, etc., and the title, name and telephone of the agency representative.
  - (4) Other Government agencies which have been notified of the situation, and if available, the title, name and telephone number of any representative of another agency who is involved with the actual or threatened labor dispute;
  - (5) Specific information regarding transportation of parts/materials or personnel which is or may be affected;
  - (6) Manufacturer/Subcontractor and union data to include:
    - (A) Name, address and telephone numbers of the manufacturer/subcontractor representative and Industrial Relations Representative to be contacted for further information;
    - (B) Union's name and local lodge number, if known.

If any of the required information is not available when providing the initial notice, indicate when it is estimated that such information can be provided.

- (b) The Contractor agrees to insert the substance of this Article, including this paragraph (b), in any subcontract to which a labor dispute may delay the timely performance of this Contract; except that each such subcontract shall provide that, in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher-tier subcontractor or JPL, as the case may be, concerning the dispute.

**ORDER OF PRECEDENCE** [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99] [FAR 52.215-8 – 10/97]

- (a) The rights and obligations of the parties of this Contract shall be subject to and governed by the Schedule, the General Provisions (the term "General Provisions" includes any "Additional General Provisions"), and any proposals, specifications or other documents or provisions which are made a part of this Contract by reference or otherwise.
- (b) To the extent of any inconsistency between (i) the Schedule, other than the Alterations Article, (ii) the Alterations Article in the Schedule, and (iii) the GPs, the inconsistency will be resolved in the following order of priority:
  - (1) The Alterations Article.
  - (2) The GPs not altered.
  - (3) The Schedule, other than the Alterations Article.
- (c) To the extent of any inconsistency between
  - (1) the Schedule, other than any proposals, specifications or other documents or provisions which are made a part of this Contract by reference or otherwise, in the Schedule, and
  - (2) any proposals, specifications or other documents or provisions which are made a part of this Contract by reference or otherwise in the Schedule,

(c)(1) has order of precedence over (c)(2).
- (d) All provisions of this Contract which are required by their terms to be included in subcontracts shall be required by the Contractor to take precedence in the subcontract over any other provisions.

**PREFERENCE FOR U.S.-FLAG AIR CARRIERS** [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99] [FAR 52.247-63 – 1/97]

(This Article does not apply to contracts or subcontracts for supplies, nonpersonal services, and construction that do not exceed \$100,000. This Article is not applicable to the acquisition of commercial items or commercial components.)

Incorporate by reference FAR 52.247-63, Preference for U.S.-Flag Air Carriers.

**PRINTING AND DUPLICATING** [CT, FP-NR&D, FP-R&D, LH/T&M, T&MC, CREI, A-E – 4/99] [NFS 1852.208-81 – 8/93]

(This Article does not apply unless this Contract requires the Contractor to provide printing or significant reproduction, i.e., in excess of 5,000 copies of a single page or in excess of 25,000 copies in the aggregate of multiple pages.)

- (a) NFS 1852.208-81, Restrictions on Printing and Duplicating (August 1993), is hereby incorporated into this Article in its entirety.

**Note 1:** The terms "documentation" referred to in paragraph (a), "printing" referred to in paragraph (b), and "production units" referred to in paragraph (c) of NFS 1852.208-81, Restrictions on Printing and Duplicating (August 1993), pertain solely to "Government publications." "Government publications" is defined as (i) reports intended primarily for internal use by the Government and (ii) reports or other materials of the type that the Government itself distributes to the public under an agency program. "Government publications" shall, unless subject to exemption under applicable regulations, be printed by or through the Government Printing Office, even though the distribution of these reports and materials may be effectuated by the Contractor for the Government.

Examples of documents which are "Government publications" include, but are not limited to: (i) publications released by the Contractor or a subcontractor to the public for the purpose of promoting NASA or a Government agency sponsor; (ii) deliverable final reports, but not interim drafts of such reports; (iii) deliverable review board presentations and conclusions in which a majority of the review board membership consists of Government representatives.

Examples of documents which are not "Government publications" include, but are not limited to: (i) publications for internal usage and communication by JPL or any contractor or a subcontractor such as JPL's or a contractor's Telephone Directory or JPL's or a contractor's internal newsletter; (ii) public information, education and public service documents, and award certificates printed for JPL's or a contractor's usage rather than Government usage, including those which may contain an incidental reference to sponsorship by NASA or another Government agency; (iii) publications for which the printing costs are not paid for by the Government; (iv) non-deliverable reports provided to the Government for informational purposes which are suitable for publication in academic, technical, or professional journals and similar publications; and (v) review board presentations and conclusions in which a majority of the formal review board membership consists of JPL, contractor, or subcontractor representatives, where Government attendance is only incidental, and the Contract does not expressly require Government approval of the proceedings.

- (b) To the extent that it applies to subcontractors, the Contractor will implement NASA Policy Guideline (NPG) 1490.5A, Procedural Guidance for Printing, Duplicating and Copying Management, dated July 1997, for all printing, duplicating, copying, forms and mail management related to the performance of this contract.

**Note 2:** Requests for waivers to permit commercial printers to print "Government publications" in cases of exigencies or other appropriate circumstances shall be submitted by the Contractor to the JPL negotiator for submission to the NASA Printing Management Officer through the Contracting Officer.

**PROHIBITION OF CONTRACTOR USE OF PRIVATELY OWNED AIRCRAFT IN CONTRACT PERFORMANCE** [CT, FPNR&D, FPR&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99]

The Contractor, its employees, agents and subcontractors, shall not use privately owned (noncommercial) aircraft in the performance of this Contract without prior approval of JPL. Any request for approval to use privately owned aircraft must include a certificate of insurance as evidence that the Contractor has in effect Aircraft Liability Insurance coverage of not less than \$5,000,000 for all deaths, injuries and property damage arising from one accident or occurrence. The Contractor shall be required as a condition of JPL's approval to submit an endorsement naming the Institute as an additional insured in such aircraft liability insurance policy. The Contractor shall include this provision in any subcontract involving travel subject to JPL approval or requiring that the subcontractor utilize a privately owned (noncommercial) aircraft.

**RELEASE OF INFORMATION** [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99]

(This Article does not apply if the Article entitled "Release of Information - Preliminary Engineering Report (PER)" is applicable.)

- (a) The Contractor agrees that all information released by the Contractor for publicity or promotional purposes (e.g., news and photo releases, exhibit copy, motion picture scripts, advertising copy) directly related to the Contractor's work with and for JPL will be submitted to JPL for review for technical accuracy prior to issuance. (See enclosed form letter JPL 1737, "Release of Information.")
- (b) The Contractor agrees to insert this clause including this paragraph in all subcontracts.

**RELEASE OF INFORMATION - PRELIMINARY ENGINEERING REPORT (PER) CONTRACTS** [A-E – 4/99]

(This Article applies only if this Contract requires the Contractor to prepare a Preliminary Engineering Report [PER]. and supersedes the Article entitled "Release of Information.")

The A-E agrees not to make, or cause to be made, or permit any of its subcontractors (including lower-tier subcontractors) to make, any public disclosure whatsoever relative to this Contract or any lower-tier subcontract (including any information generated thereunder), without first submitting three copies of the text of such planned disclosure to JPL to the attention of the Contract Negotiator and awaiting receipt of written approval from JPL concerning the manner, degree and extent of such public disclosure. The A-E further agrees to be bound by the decision of JPL in such matters.

**REQUIREMENTS FOR REGISTRATION OF DESIGNERS** [A-E – 2/00]

(Work performed outside the United States is exempt from the requirements of this Article.)

The design of architectural, structural, mechanical, electrical, civil or other engineering features of the work shall be accomplished or reviewed and approved by architects or engineers registered to practice in the particular professional field involved in the State of California.

**RESPONSIBILITY OF THE ARCHITECT-ENGINEER CONTRACTOR** [A-E – 4/99]

- (a) The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Contractor under this Contract. The Contractor shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.
- (b) Neither JPL's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to the Institute in accordance with applicable law for all damages to the Institute or the Government caused by the Contractor's negligent performance of any of the services furnished under this Contract.
- (c) The rights and remedies of the Institute provided for under this Contract are in addition to any other rights and remedies provided by law.
- (d) If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

**RESTRICTIONS ON CERTAIN FOREIGN PURCHASES** [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99] [FAR 52.225-11 – 10/96]

Incorporate by reference FAR 52.225-11, Restrictions on Certain Foreign Purchases.

**STOP WORK ORDER** [CT, FP-NR&D, FP-R&D, A-E – 8/01] [FAR 52.242-15 - 8/89]

- (a) JPL may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this Contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop work order issued under this Article. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, JPL shall either:
  - (1) Cancel the stop work order; or

- (2) Terminate the work covered by such order either for convenience of the Institute or the Government or, if appropriate, for default.
- (b) If a stop work order issued under this Article is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. JPL shall make an equitable adjustment in the delivery schedule, the contract amount, and in any other provisions of the Contract that may be affected, and the Contract shall be modified, in writing, accordingly, if:
  - (1) The stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract; and
  - (2) The Contractor asserts a claim for the adjustment within 30 days after the end of the period of work stoppage; provided, that, if JPL decides the facts justify the action, it may receive and act upon the claim asserted at any time before final payment under this Contract.
- (c) If a stop work order is not canceled and the work covered by the order is terminated for the convenience of the Institute or the Government, JPL shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement.
- (d) If a stop work order is not canceled and the work covered by the order is terminated for default, JPL shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop work order.

**SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND CONSULTANTS** [A-E – 4/99] [FAR 52.244-4 – 4/84]

Any subcontractors and outside associates or consultants required by the Contractor in connection with the services covered by the Contract will be limited to individuals or firms as are specifically set forth in the Schedule of this Contract. The Contractor shall obtain JPL's written consent before making any substitution for these subcontractors, associates, or consultants.

**SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS** [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 8/01] [FAR 52.244-6 – 10/95]

- (a) Definition.
  - (1) "Commercial item," as used in this Article, has the meaning contained in the "Definitions" Article and in FAR 52.202-1, "Definitions."
  - (2) "Subcontract," as used in this Article, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.
- (b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this Contract.
- (c) Notwithstanding any other Article of this Contract except to the extent needed to satisfy the technical requirements and technical data (including software) deliverables under this Contract, the Contractor is not required to include any JPL provision or Article, other than those FAR provisions listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:
  - (1) 52.222-26, Equal Opportunity (E.O. 11246);
  - (2) 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4212(a)); and
  - (3) 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793).
- (d) The Contractor shall include the terms of this provision, including this paragraph (d), in subcontracts awarded under this Contract.

**TERMINATION FOR ARCHITECTS AND ENGINEERS** [A-E – 4/99] [FAR 52.249-7 – 4/84]

- (a) JPL may terminate this Contract in whole or, from time to time, in part, for the convenience of the Government or the Institute or because of the failure of the Contractor to fulfill the Contract obligations. JPL shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall:
  - (1) Immediately discontinue all services affected (unless the notice directs otherwise); and

- (2) Deliver to JPL all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Contract, whether completed or in process.
- (b) If the termination is for the convenience of the Institute, an equitable adjustment in the Contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
- (c) If the termination is for failure of the Contractor to fulfill the Contract obligations, JPL may complete the work by contract or otherwise and the Contractor shall be liable to the Institute for any additional cost for completion of the work.
- (d) If, after termination for failure to fulfill Contract obligations, it is determined that the Contractor had not failed, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Institute.
- (e) The rights and remedies of the Institute provided in this Article are in addition to any other rights and remedies provided by law or under this Contract.

**TOXIC CHEMICAL RELEASE REPORTING** [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99] [FAR 52.223-14 – 10/96]

(This Article is applicable to all contracts where the value of the contract and all options at the time of award is expected to exceed \$100,000.)

By entering into this Contract, the Contractor agrees to abide by and accept all of the Terms and Conditions found in the Federal Acquisition Regulations (FAR) at 52.223-14.

**TRANSFER OF TECHNICAL DATA UNDER SPACE STATION INTERNATIONAL AGREEMENTS** [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 8/01] [NFS 1852.227-87 – 4/89]

(This Article applies to contracts and subcontracts in support of Space Station program activities that may involve transfer of technical data subject to the International Traffic in Arms Regulations, 22 CFR parts 120 through 130, or the Export Administration Regulations (EAR), 15 CFR PARTS 730-799 in accordance with the NASA Export Control Program.)

- (a) In the cooperative Space Station Freedom Program, NASA has the authority to provide to the international partners all information necessary to implement the multilateral Space Station Intergovernmental Agreement and the Space Station Memoranda of Understanding. NASA is committed under these Space Station agreements to provide its international Space Station partners with certain technical data which are subject to the U.S. export control laws and regulations. NASA will have obtained any necessary approvals from the Department of State for the transfer of any such technical data. Space Station contractors, acting as agents of NASA under the specific written direction of the Contracting Officer, or designated representative, require no other separate approval under the International Traffic in Arms Regulations (ITAR).
- (b) The Contractor agrees, when specifically directed in writing by the JPL Negotiator or an authorized JPL representative under this Contract, acting upon the written direction of the NASA Contracting Officer or designated representative, to transfer identified technical data to a named foreign recipient, in the manner directed. No export control marking should be affixed to the data unless so directed. If directed, the text of the marking to be affixed will be furnished by NASA through the JPL Negotiator or an authorized JPL representative under this Contract.
- (c) It should be emphasized that the transfer is limited solely to those technical data which NASA specifically identifies and directs the Contractor to transfer in accordance with paragraph (b), above, and that all other transfers of technical data to foreign entities are subject to the requirements of the U.S. export control laws and regulations.
- (d) Nothing contained in this Article affects the allocation of technical data rights between NASA and the Contractor or any subcontractors as set forth in the "Rights in Data" Article of this Contract, nor the protection of any proprietary technical data which may be available to the Contractor or any subcontractor under that Article.
- (e) The Contractor agrees to include this Article, including this paragraph (e), in all subcontracts hereunder, appropriately modified to reflect the relationship of the parties.

**YEAR 2000 COMPLIANCE REQUIREMENT - NEW WORK** [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99] [PIC 98-8 - 5/21/98]

(This provision is not applicable to contracts \$2,500 or less.)

The Statement of Work includes the following performance requirements:

- (a) Definition. "Year 2000 compliant," as used in this provision, means that the information technology (hardware, software and firmware, including embedded systems or any other electro-mechanical or processor-based systems used in accordance with its associated documentation) accurately processes date and date-related data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, and, to the extent that other information technology, used in combination with the information technology being acquired, properly exchanges date and date-related data with it.
- (b) (1) Any information technology provided, operated and/or maintained under this Contract is required to be Year 2000 compliant. To ensure this result, the Contractor shall provide documentation describing how the IT items or services demonstrate Year 2000 compliance, consisting of standard product literature or test reports for commercial items, test procedures, or other documentation, if any, otherwise specifically required in paragraph (b)(2).  
  
(2) (RESERVED)
- (c) The Contractor warrants that any IT items or services provided under this Contract that involve the processing of date and date-related data are Year 2000 compliant. If the Contract requires that specific listed products must perform as a system in accordance with the foregoing warranty, then that warranty shall apply to those listed products as a system.
- (d) The remedies available under this warranty shall include repair or replacement, at no additional cost to JPL (or if this is a cost-reimbursement contract, at no additional fee to JPL) and the Government, of any provided items or services whose non-compliance is discovered and made known to the Contractor in writing within 90 days after acceptance. In addition, all the other terms and limitations of the Contractor's standard commercial warranty or warranties shall be available to JPL for the IT items or services acquired under this Contract. Nothing in this warranty shall be construed to limit any rights or remedies JPL may otherwise have under this Contract with respect to defects other than Year 2000 performance.
- (e) (RESERVED)



**Jet Propulsion Laboratory**  
California Institute of Technology  
4800 Oak Grove Drive  
Pasadena, California 91109-8099  
(818) 354-4321

## **RELEASE OF INFORMATION**

This Contract with the Jet Propulsion Laboratory (JPL) constitutes a subcontract under a prime contract between the California Institute of Technology and the National Aeronautics and Space Administration (NASA). It is NASA's policy to provide the widest practical dissemination of information on all of its activities. Since 90% of NASA's research and development effort is performed by private industry, contractors and subcontractors have played a large role in this process.

In accordance with this policy, the Contractor may want to issue press releases or plan publicity and advertising from time to time, and the Contractor will be expected to respond to queries from information media.

Close coordination in all of these matters is required, and JPL requires that all materials (e.g., news and photo releases, exhibit copy, motion picture scripts, advertising copy) directly related to the Contractor's work with and for JPL be reviewed by JPL for technical accuracy prior to issuance or use.

To expedite this review, the Contractor shall send the materials to the JPL Media Relations Office, mail stop 186-120, stating the Contractor's deadlines and referencing this Contract number.

In the event this Contract is a cost-reimbursement type contract, review by JPL shall not constitute approval for reimbursement of expenditures made in connection with publicity or advertising releases. Any such expenditures remain subject to applicable cost principles.

Nothing contained herein shall be deemed to change existing requirements relating to the release of classified information.



## **NOTIFICATION TO PROSPECTIVE CONTRACTORS OF JPL'S ETHICS POLICIES AND ANTI-KICKBACK HOT LINE**

JPL is committed to conducting its business in accordance with the highest standards of ethics and integrity. In this regard, we have an on-going orientation and training program to assure that every JPL employee is aware of this commitment and their individual responsibility for compliance. We must rely on the personal integrity of our employees and the integrity and cooperation of our suppliers and contractors to make sure that these high standards are maintained.

The policies that implement our standards of business conduct state clearly that no employee may solicit or accept any "kickback," gift, gratuity, entertainment, compensation, or favors of any kind from any supplier/contractor or prospective supplier/contractor to JPL. Our policies make it clear that these standards not only apply to procurement personnel but also to employees in all functions and at all levels.

The purpose of this letter is to make sure that you and your employees are aware of our policies, and that together we can achieve and maintain excellence in the conduct of our business relationships.

In the unlikely event that any JPL employee ever attempts to solicit a "kickback," please notify us immediately. JPL has established an Anti-Kickback Hot Line number, (818) 354-9999. Please feel free to call this number collect. The information you provide will be handled with confidentiality, investigated thoroughly, and appropriate action taken.

Thank you for your cooperation and support in this important matter.



## CERTIFICATIONS

*(NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.)*

### **I. CERTIFICATION OF NONSEGREGATED FACILITIES**

- (a) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise.
- (b) By the submission of an offer, the offeror certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in the contract.
- (c) By submission of the offer, the offeror further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will:
  - (1) Obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the Equal Opportunity clause;
  - (2) Retain such certifications in its files; and
  - (3) Forward this certification and the following notice to the proposed subcontractors:

#### NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED FACILITIES

A Certificate of Nonsegregated Facilities must be submitted before the award of a subcontract under which the subcontractor will be subject to the Equal Opportunity clause. The certification may be submitted either for each subcontractor for all subcontracts during a period (i.e., quarterly, semi-annually, or annually).

- (d) By commencing performance of the Contract work, the selected contractor certifies to the Nonsegregated Facilities provisions above.

### **II. CERTIFICATION OF ANTI-KICKBACK COMPLIANCE**

(A Certification of Anti-Kickback Compliance must be submitted prior to award.)

By submission of an offer, the offeror certifies that it has read the General Provision entitled "Anti-Kickback Procedures," contained in the solicitation and that neither it nor any of its employees has performed or participated in any prohibited actions, as defined in that provision, relating to the award of the Contract. By commencing performance of the Contract work, the selected contractor certifies to Anti-Kickback Compliance.

### **III. CERTIFICATION OF AMERICANS WITH DISABILITIES ACT COMPLIANCE**

(The Contractor represents and certifies the following as part of its offer.)

By submission of an offer, the offeror certifies that it complies with the Americans with Disabilities Act, 42 U.S.C., 12101 et. seq., and will maintain compliance throughout the life of this Contract. By commencing performance of the Contract work, the selected contractor certifies to the Americans with Disabilities Act compliance.

**IV. CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS  
TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(The following certification applies to all offers and awards in excess of \$100,000.)

- (a) The definitions and prohibitions contained in the General Provision Article "Limitation on Payments to Influence Certain Federal Transactions" are hereby incorporated by reference in paragraph (b) of this Certification.
- (b) By submission of an offer, the offeror certifies to the best of his or her knowledge and belief that on or after December 23, 1989:
  - (1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;
  - (2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the Offeror shall complete and submit, with its offer, OMB Standard Form LLL, "Disclosure of Lobbying Activities," to the JPL Contract Negotiator; and
  - (3) He or she will include the language of this Certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
- (c) Submission of this certification and disclosure is a prerequisite for making or entering into this Contract imposed by Section 1352, Title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to civil penalty of not less than \$20,000 and not more than \$100,000, for each such failure.

**V. CERTIFICATION OF FULL DISCLOSURE BY THE CONTRACTOR/OFFEROR  
REGARDING WHETHER IT ANTICIPATES BEING OR IS DEBARRED,  
SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE U.S. FEDERAL  
GOVERNMENT AT TIME OF AWARD**

(This certification applies to contracts with a contract value exceeding \$25,000.)

- (a) By submission of an offer, the offeror certifies that it has provided full disclosure in writing to JPL whether as of the anticipated time of award of any contract resulting from the solicitation, it anticipates that it or its principals will be debarred, suspended, or proposed for debarment by the U.S. Federal Government.
- (b) By commencing performance of the Contract work, the selected contractor certifies that it has made full disclosure to JPL in writing as to whether as of the time of award it or any of its principals is debarred, suspended, or proposed for debarment by the U. S. Federal Government. (see FAR 9.404 for information on the List of Parties Excluded from Procurement Programs).

## **VI. CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING**

(This certification is required prior to award of a contract with an estimated value, including any options, over \$100,000.)

- (a) Submission of this certification is a prerequisite for making or entering into this Contract imposed by Executive Order 12969, August 8, 1995.
- (b) By submission of an offer, the offeror certifies that it has accepted and certifies to all the Terms and Conditions found in the Federal Acquisition Regulation (FAR) at 52.223-13.

## **VII. CERTIFICATION REGARDING CONTRACTOR REPRESENTATION BY FORMER CALTECH/JPL EMPLOYEES**

(The Contractor represents and certifies the following as part of its offer.)

By submission of an offer, the offeror certifies that it has no previous JPL or Caltech employee involved in this procurement who has been gone from JPL for less than one year, who participated personally and substantially in the subject matter while working for JPL or Caltech, who was officially responsible for the subject matter while working for JPL or Caltech, and who owns or represents the proposer's organization.



## **ASBESTOS NOTIFICATION**

The Jet Propulsion Laboratory is committed to providing a safe and healthy work environment for all personnel.

In the past several years, the Laboratory management, working through the JPL Safety Operations Section - Industrial Hygiene and Workers Compensation Group (SOS - IHWC) and the Facilities Division, has had an on-going program of asbestos identification and control. This program has included bulk sampling, air monitoring, and training for members of the Facilities and Maintenance staff.

Through this program, some of the buildings at JPL have been identified to contain friable sprayed-on fireproofing above the ceilings. At the Oak Grove site, these buildings include 167, 168, 169, 179, 180, 183, 186, 230, 238, 264 and 291, and at the Foothill site, buildings 502, 506 and 507. Asbestos may be present in other JPL buildings in other various forms, including, but not limited to: transite, thermal system insulation, roofing products, ceiling tiles, spray-applied acoustical ceiling, wall materials, and floor tiles/linoleum/mastic.

The majority of asbestos at JPL is located in restricted access areas, such as mechanical rooms, boiler rooms and attics. It is in generally good condition and does not pose a hazard during normal operations.

The SOS-IHAWC staff has taken numerous air samples in JPL buildings. Sampling results indicate that airborne asbestos levels in the buildings are well below regulatory limits and are lower than those found in industrial workplaces where adverse health effects have been observed. Fiber levels in JPL buildings are not significantly different than fiber levels found outside.

Asbestos-containing materials do not pose a health hazard, unless the fibers become airborne. Contractor maintenance/construction/renovation activity involving intentional or accidental contact with friable materials can release fibers; therefore, only authorized and properly trained personnel are permitted to perform work that may disturb asbestos materials.

General written procedures and handling restrictions have been provided to JPL and contractor personnel. SOS-IHAWC must be given notification and, if deemed necessary, a written description of any asbestos-related work to be conducted in areas where asbestos may be present prior to the initiation of activities. The work to be performed will determine if these areas must be tested and cleared. SOS-IHAWC will review sampling results and documentation after completion of contractor activities prior to occupancy.

Pursuant to the California Health and Safety Code (Chapter 10.4, Section 25915), each employee has the right to review all reports about surveys, bulk sampling and air sampling. These reports are available for review during normal business hours. Contact SOS-IHAWC at extension 4-1771 to review these documents or if there are any questions.

## Notice of Potential Tax Withholding

JPL is legally obligated to withhold federal and/or state income tax from certain contractor and consultant payments when required by law. Withholding may be required under the following circumstances:

### **1. Nonresident Independent Contractor/Consultant State Source Income Tax**

Payments made to California nonresident contractors or consultants, including sole proprietors, corporations, limited liability companies, and partnerships, that do not have a permanent place of business in CA, or that are not registered to do business in California, are subject to a seven percent state income tax withholding for services performed in California. No withholding is required on payments for goods, or for services performed outside California. See State Tax Form 587 (Nonresident Income Allocation Worksheet) and Form 590 (Withholding Exemption Certificate).

### **2. Nonresident (and Resident) Alien Federal Income Tax**

Payments made to nonresident alien contractors/consultants are subject to a thirty percent federal income tax withholding for services performed in the U.S. unless an exception applies. A nonresident alien from a country with an income tax treaty with the United States may be exempt from tax under the Self-employment Article of the treaty if the individual satisfies the conditions of the treaty article. A nonresident alien from a non-treaty country may claim a daily personal exemption amount. Such nonresident aliens who have a U.S. taxpayer identification number (TIN) – either a U.S. Social Security Number or Individual Taxpayer Identification Number - can submit Federal Tax Form 8233 (Exemption From Withholding on Compensation for Independent Personal Services of a Nonresident Alien Individual) to claim a withholding reduction or exemption. No exemption is available for nonresident aliens who lack a TIN. Nonresident aliens not claiming such an exemption should submit Federal Form W-8BEN (Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding). For more information, refer to IRS Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities.

Resident aliens should complete Federal Form W-9 (Payer's Request for Taxpayer Identification Number and Certification) to submit a U.S. taxpayer identification number. Resident aliens with no U.S. taxpayer identification number will be subject to back-up withholding, currently at a rate of twenty-five percent.

### **3. Federal or State Tax Liens or Levies**

JPL may be required to withhold payments in an amount necessary to satisfy tax liens or levies or judgments duly issued against contractors or consultants by cognizant tax or judicial authorities.

Disclaimer: JPL is not liable for amounts incorrectly withheld. However, if JPL determines that amounts have been incorrectly withheld, and provided that such amounts have not been remitted to tax authorities, JPL shall refund such amounts to the contractor/consultant.